



December 19, 2001

Ms. Elaine S. Hengen
Assistant City attorney
City of El Paso
2 Civic Center Plaza
El Paso, Texas 79901-1196

OR2001-5989

Dear Ms. Hengen:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 156367.

The City of El Paso Police Department (the "department") received a request for various information concerning a certain internal affairs file, case no. CP01-143. You state that the department will release to the requestor most of the requested records. We assume that you have already released to the requestor the information you do not seek to withhold from disclosure. Gov't Code § 552.221(a) (requiring prompt production of public information); *see* Open Records Decision No. 664 (2000). You claim that a portion of the requested information is excepted from disclosure under sections 552.101, 552.108, 552.117 and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

You raise section 552.108, the law enforcement exception, for various information about the SWAT team. Section 552.108(b)(1) reads as follows:

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from the [required public disclosure] if:

(1) release of the internal record or notation would interfere with law enforcement or prosecution[.]

The information at issue concerns tactical procedures used by the SWAT team, SWAT team training schedules, specific types of training, descriptions of specific incidents occurring

during training, descriptions of specific future needs and concerns with SWAT training and operations, the radio call signs used by the SWAT team during SWAT incidents, information about the specific types and numbers of weapons used by the SWAT team, the location of SWAT equipment, and the pager and duty station telephone numbers of certain SWAT team members. You contend that the release of this information, which you have highlighted in exhibits B, C, D, and F, "would severely hamper and reduce the effectiveness of the work of the team and endanger the lives and safety of the officers." You go on to argue that "[i]t is imperative to the success of the operation and for the safety of the officers, that the SWAT team maintain the confidentiality of its tactics, enforcement mechanisms and call signs, so as to allow the SWAT team to maintain the upper hand in all SWAT situations."

We find that the department has demonstrated the applicability of section 552.108 to most of the submitted SWAT team information. However, as the department is releasing the information in the 1998 training schedules that appears elsewhere in the submissions, we find that the department has not shown the applicability of section 552.108 to the training schedules. Thus, with the exception of the training schedules, the department may withhold the information for which you claim section 552.108 of the Government Code. We have marked the information the department must release.

You raise the common law right to privacy for a small portion of information in exhibit F. Section 552.101, which excepts from disclosure information made confidential by law, encompasses the doctrine of common law privacy. Common law privacy protects information if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). The type of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. 540 S.W.2d at 683. We agree that exhibit F contains information protected from disclosure based on the common law right to privacy and marked the information accordingly. See Open Records Decision No. 343 (1982).

You have submitted representative samples of information in exhibit D for which you raise section 552.117(2).¹ You also raise this exception for other submitted information. Section 552.117(2) of the Government Code provides:

¹We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

Information is excepted from the requirements of Section 552.021 if it is information that relates to the home address, home telephone number, or social security number, or that reveals whether the following person has family members:

- (2) a peace officer as defined by Article 2.12, Code of Criminal Procedure, or a security officer commissioned under Section 51.212, Education Code, regardless of whether the officer complies with Section 552.024.²

Assuming that the information concerns a peace officer as defined by article 2.12 of the Code of Criminal Procedure, we agree that section 552.117(2) applies to the information that you have marked. Accordingly, the department must withhold this information from the

²Section 552.024 of the Government Code provides:

(a) Each employee or official of a governmental body and each former employee or official of a governmental body shall choose whether to allow public access to the information in the custody of the governmental body that relates to the person's home address, home telephone number, or social security number, or that reveals whether the person has family members.

(b) Each employee and official and each former employee and official shall state that person's choice under Subsection (a) to the main personnel officer of the governmental body in a signed writing not later than the 14th day after the date on which:

- (1) the employee begins employment with the governmental body;
- (2) the official is elected or appointed; or
- (3) the former employee or official ends service with the governmental body.

(c) If the employee or official or former employee or official chooses not to allow public access to the information, the information is protected under Subchapter C.

(d) If an employee or official or a former employee or official fails to state the person's choice within the period established by this section, the information is subject to public access.

(e) An employee or official or former employee or official of a governmental body who wishes to close or open public access to the information may request in writing that the main personnel officer of the governmental body close or open access.

requestor.³ We have also marked additional information that the department must withhold based on section 552.117.

You raise section 552.130 for the Texas driver's license numbers. Section 552.130 provides in relevant part:

(a) Information is excepted from the requirement of Section 552.021 if the information relates to:

(1) a motor vehicle operator's or driver's license or permit issued by an agency of this state[.]

We agree that you must withhold the Texas driver's license number under section 552.130.

In summary, with the exception of the SWAT team training schedules, the department may withhold the information it has highlighted in exhibits B, C, D and F based on section 552.108. The department must withhold the marked private information based on section 552.101. The department must withhold the marked information subject to section 552.117(2). The department must withhold the Texas driver's license numbers based on section 552.130. The department must release the remaining information.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the

³In Open Records Decision No 670 (2001), the attorney general concluded that all governmental bodies covered by the Act may withhold home addresses and home telephone numbers of peace officers, in addition to social security numbers and information that reveals whether the peace officer or security officer has family members, without the necessity of requesting an Attorney General decision as to whether the exception under section 552.117(2) applies. That decision as to this category of information is, then, a "previous determination" under section 552.301(a) of the Act.

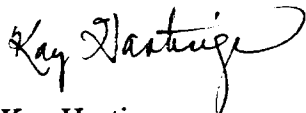
statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Kay Hastings
Assistant Attorney General
Open Records Division

KH/seg

Ref: ID# 156367

Enc. Submitted documents

c: Ms. Mary Lou Carrillo
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(w/o enclosures)